



Testimony to the Human Services Committee

Submitted by Mag Morelli, President of LeadingAge Connecticut

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Regarding

HB 5257, An Act Requiring Notice of Nursing Home Resident Abuse

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HB 5358, An Act Establishing a Bill of Rights for Residents of Continuing Care Retirement Communities

Good afternoon Senator Moore, Representative Abercrombie, and members of the Human Services Committee. My name is Mag Morelli and I am the President of LeadingAge Connecticut, a statewide membership organization representing not-for-profit provider organizations serving older adults across the continuum of aging services, including not-for-profit skilled nursing facilities and continuing care retirement communities. On behalf of LeadingAge Connecticut, I would like to submit the following testimony regarding *HB 5257, An Act Requiring Notice of Nursing Home Resident Abuse* and *HB 5358, An Act Establishing a Bill of Rights for Residents of Continuing Care Retirement Communities*. Joining me today is Michael Rambarose, President of Whitney Center, a LeadingAge Connecticut member continuing care retirement community in Hamden.

HB 5257, An Act Requiring Notice of Nursing Home Resident Abuse

Prevention of elder abuse is a priority for LeadingAge Connecticut members, regardless of the setting and in particular in the nursing home setting which is the focus of this bill and where both state and federal laws have imposed strict reporting requirements and strong enforcement mechanisms.

I have attached to this testimony a chart of the state and federal reporting requirements that are imposed on nursing homes not only for abuse, but also for accidents and other incidents. This chart will hopefully be of assistance to the committee as you review the need for additional reporting mandates.

When there is an allegation or suspicion of abuse in a nursing home, state and federal laws require an immediate report (within 24 hours) to the Department of Public Health, an immediate investigation by the nursing home, and then a report of the investigation's findings to the Department of Public Health within 72 hours. The Department will then also conduct their own investigation either upon annual survey or in a separate visit to the nursing home. If a report of abuse is substantiated, the Department of Public Health and the Centers for Medicare and Medicaid Services (CMS) impose a standard of strict liability and the nursing home is cited. Strict liability means that even if the nursing home took every measure to prevent an act of abuse such as conducting background checks, providing sufficient training, conducting appropriate monitoring and then taking swift action to remove the employee who is implicated in the abuse – the nursing home itself is found to be responsible and will be cited.

State law also mandates the nursing home administrator, nursing home staff and other categories of professionals and individuals to report to the Department of Social Services within 72 hours when they have reasonable cause to suspect or believe that abuse occurred with respect to a nursing home resident (per *Section 17b-407* of the general statutes).

While the definitions of abuse in these laws and regulations vary slightly, they are all very broad and include both verbal and physical abuse and may include resident to resident interaction.

Finally, state and federal laws also require that local law enforcement be notified whenever there is a report of an alleged crime against anyone in a nursing facility.

The proposed bill before you today would require the Department of Social Services to notify the family of a resident when there is a notice of any substantiated abuse of a nursing home resident. Federal and state laws currently require that a nursing home notify family of any significant event or change of condition involving the resident. This regulation is enforced by the Department of Public Health, which is the agency that oversees skilled nursing facility licensure.

We hope that the information that we have provided in this testimony is both helpful and informative as to the safeguards that are currently in place to prevent any level of abuse in our nursing homes. Providing a safe and caring home for our nursing home residents is our mission and our top priority. We take very seriously our responsibility to ensure that families of our residents have peace of mind in knowing their loved ones are in a safe and caring environment.

HB 5358, An Act Establishing a Bill of Rights for Residents of Continuing Care Retirement Communities

This bill seeks to establish a bill of rights for residents of Continuing Care Retirement Communities or CCRCs. CCRCs are communities that offer independent living and a continuum of care and services for older adults. While there are a variety of types of CCRCs, generally they are multi-building campuses or large single buildings that provide independent living, supportive health services such as skilled nursing and assisted living services, and other amenities and services such as dining, transportation, activity programs, exercise facilities, as well as housekeeping and laundry services.

The bill lists three areas to be addressed in a CCRC resident bill of rights: (1) additional financial disclosures by CCRC owners; (2) greater input from residents in the decision-making process; and (3) additional state oversight.

The CCRC model is based on a contractual agreement between the resident and the CCRC. Most CCRCs require an entrance fee, which may or may not be refundable, and a monthly fee which varies depending on the type of CCRC contract.

In Connecticut, CCRCs are overseen by the Department of Social Services. Because the model is based on a contractual agreement between the resident and the CCRC, our laws and regulations are heavily weighted toward disclosure and transparency for the consumer. Current laws already require complete and regular financial disclosures by CCRCs to current and prospective residents.

The licensed health care services provided by a CCRC are overseen by the Department of Public Health. CCRC residents who occupy a living space where they receive assisted living services or skilled nursing services are covered by the rights and protections afforded all assisted living, home health care and nursing home residents.

LeadingAge Connecticut represents Connecticut's eleven not-for-profit CCRCs. (There are twenty-one CCRCs in the state.) Our interest is to see this lifestyle option for older adults flourish in this state and to ensure that current and future residents feel secure in the CCRC model. Toward that goal we have worked together with the Connecticut CCRC Residents Association on several initiatives over the last decade, including the development of a Connecticut CCRC Consumer Guide and the reinstatement of the Department of Social Services Continuing Care Advisory Committee.

The reinstated Department of Social Services Continuing Care Advisory Committee has been meeting since 2012 and includes representation from both residents and providers. Also serving on the Committee are experts in accounting, actuarial science, finance, health care, and the law. The Committee has reviewed several issues brought forward for its consideration and I believe is doing an excellent job in providing the expert advice and assistance to the Department staff that was intended and outlined in statute. We would like to thank Commissioner Bremby for reinstating the Committee.

The CCRC lifestyle choice is a contractual arrangement and as such, contractual terms and conditions may vary and change with the future evolution of the CCRC model. As I said, LeadingAge Connecticut's goal is to ensure the success of this unique model that offers older adults an innovative lifestyle alternative to other housing and care options. Nothing is more important to that future success than providing the current and future residents with a sense of security in the model. However, toward that goal, we believe that there are elements to the business and governance of the CCRC model that need to be maintained. Any changes to the law should be consistent with the current regulatory approach towards disclosure and transparency. In addition, great care must be taken to ensure that legislation does not interfere with or impede existing contractual arrangements and business models.

CCRC contracts and financial models have evolved over that last twenty-five years. I have provided an outline of the basic CCRC contracts types below. In a very general sense, there are four types of CCRC contracts that are available in the market. Each community has their own unique contracts and there may be several contract options within one community. We respectfully request that the Committee be sensitive to the existing contractual obligations and arrangements. We would also ask that the Committee recognize the current governance models of the not-for-profit CCRCs and that any provisions addressing resident input in the decision-making process recognize the governance representation that is already in place and not require a "one size fits all" model of representation in the decision-making process.

In conclusion, we look forward to continuing to work with the CCRC residents, the sponsor of this legislation and the Human Services Committee to ensure a strong and secure future for the continuing care model of living.

Thank you for this opportunity to submit this testimony. Michael and I would be happy to answer any questions.

Mag Morelli, President



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LeadingAge Connecticut is a membership organization representing not-for-profit provider organizations serving older adults across the continuum of care including nursing homes, residential care homes, housing for the elderly, continuing care retirement communities, adult day centers, home health care and assisted living agencies. By continuing a tradition of mission-driven, consumer-centered management and competent, hands-on care, not-for-profits set the standard in the continuum of housing, care and services for the most vulnerable aging adults.

Continuing Care Retirement Community Contract Types

The following information is from "Today's Continuing Care Retirement Community (CCRC)" which provides a national overview of this popular senior living model. The report provides an overview of CCRCs, including history, resident service agreements, and entrance fees and refunds. The report is not state specific. This paper was developed by a task force of CCRC executives of both not-for-profit and for-profit communities, consultants, financial advisors and attorneys in cooperation with LeadingAge, American Seniors Housing Association, and National Investment Center.

CCRCs Offer Older Adults an Attractive Lifestyle Option

For many decades, Continuing Care Retirement Communities (CCRCs) have offered older adults an innovative and independent lifestyle that differs from other housing and care options. CCRCs are especially attractive to seniors making decisions for their long-term care future. They allow older adults to convert home equity or other assets into housing and to receive daily living services and health care in a way that keeps monthly expenditures more stable. Today, sponsors include religious, fraternal and community organizations, universities, hospitals, and companies dedicated solely to the development and operation of senior living communities.

Entrance-Fee CCRCs. When the CCRC model began growing in the 1960s and 1970s, entrance-fee CCRCs typically provided an extensive resident service package that included little (if any) additional charge if the resident transferred to areas of the community that offered higher levels of care. As CCRCs evolved, additional contract types were developed to provide choice for prospective residents and options for the providers. Today, the type of contract available to a prospective resident may depend on his or her health condition or history and the related risk of overutilization of health services.

The entrance-fee contracts that CCRCs currently offer residents usually fall into one of the following categories:

- ***Life-care (extensive) contract (Type A)***

This is the original full-service contract in which individuals (or couples) agree to pay an entrance fee and ongoing monthly fees in exchange for living accommodations and an extensive range of services and amenities. A Type A contract generally provides for a resident's transfer to the appropriate level of care—assisted living or nursing, either on-site or accessible off-site—for an unlimited time at little or no additional cost. The CCRC bears the majority of the financial burden of the resident's long-term care.

- ***Modified contract (Type B)***

With this type of contract, the resident pays an entrance fee and ongoing monthly fees for the right to stay in an independent living unit and receive certain services and amenities. The Type B contract obligates the CCRC to provide residents with appropriate assisted living or nursing care for a specified number of days at no extra charge and/or at rates that are discounted from those charged to those admitted from outside the CCRC. The number of covered days and/or the discount varies from community to community. The CCRC bears the financial burden of the resident's long-term care during the covered period; thereafter, the financial responsibility for long-care shifts to the resident, who must pay the regular per-diem rate charged to those admitted from outside the CCRC.

- ***Fee-for-service contract (Type C)***

Fee-for-service continuing-care contracts require an entrance fee and ongoing monthly fees but do not include any discounted health-care or assisted living services. Rather, the resident receives priority or guaranteed admission for these services, as needed, but must pay the regular per diem rate paid

by those admitted from outside the CCRC. With this type of contract, the resident bears the financial burden of his or her additional long-term care needs. The charges will vary, depending upon the services needed.

The pricing of a CCRC's entrance fees and monthly fees is typically accomplished through actuarial analysis. Because the Type A and Type B contracts include all or a portion of the resident's long-term care needs, the entrance and monthly fees may be higher than a Type C contract offered by the same CCRC. Also, a portion of the fees paid by the resident may be available as a medical deduction.

Rental CCRCs. Residents of rental CCRCs pay no entrance fee (other than a possible security deposit plus, typically, the first and last months' fees) at the time they occupy their apartment or cottage unit. They pay the prevailing market rate for any care required. This type of contract, like the fee-for-service entrance-fee contract, includes no coverage for the cost of assisted living or nursing services, but offers the resident the lowest level of upfront expense.

Nursing Home Abuse and Crime Reporting Requirements

Federal:

- CMS: Facility's duty to report allegations or incidents of abuse, neglect, mistreatment, injuries of unknown source involving a resident, or allegations/incidents involving misappropriation of resident property - See 42 CFR §483.13(c)(2)
 - Timing -- immediate report to DPH and investigation with report back in five working days
 - Applies only to nursing homes
 - Covers -- nursing home residents
- Elder Justice Act: Duty of certain individuals to report "reasonable suspicion of crime" against resident/client to DPH (for CMS) and to local law enforcement - See Section 1150B of the Social Security Act
 - Timing – two hours if serious bodily injury; all others – 24 hours
 - Applies to "long term care facilities" – including nursing homes and hospices operating in nursing homes that receive at least \$10,000 of federal funds annually
 - Covers – nursing home residents and individuals receiving outpatient services at the facility

State:

- DPH: Facility's duty to report allegations of abuse as Class B reportable event - See CT Public Health Code § 19-13.D8t(g)
 - Timing – immediate notice to DPH; investigation within 24 hours; written report to DPH within 72 hours
 - Applies to nursing homes
 - Covers -- nursing home residents
- Ombudsman: Certain mandated reporters' duty to report when there is "reasonable cause to suspect or believe that abuse, neglect, exploitation, abandonment occurred" with respect to nursing home resident – Conn. Gen. Stat. § 17b-407
 - Timing – report to DSS within 72 hours
 - Applies to nursing homes
 - Covers -- nursing home residents
 - NOTE – separate mandatory reporting law applies to elderly persons who do not reside in nursing homes – Conn. Gen. Stat. § 17b-451
- Local Law Enforcement: Administrator's duty to report alleged crime against anyone in a nursing facility by submitting "detailed statement" to local law enforcement – See Conn. Gen. Stat. § 19a-553.
 - Timing – no specific timing required
 - Applies to nursing home administrator
 - Covers -- any alleged crime committed in a nursing home by resident, employee or visitor to facility; not limited to crimes committed against residents